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Secretary Mary Cottrell
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

RE: DTE 04-115, Procurement of Default Service Power Supply

Dear Secretary Cottrell:

Local 369 of the Utility Workers Union of America (“UWUA Local 369”) thanks the Commission for providing the opportunity for interested parties to submit comments regarding the procurement of default service power supply for residential and small commercial/industrial customers. UWUA Local 369 is the collective bargaining agent for approximately 5,000 current and retired utility workers in Massachusetts. These workers are employed by NSTAR in a wide range of customer service, billing, maintenance and operations jobs. Some UWUA Local 369 workers are also employed by the independent owners of in-state power generation facilities. Local 369’s members are extremely familiar with all aspects of electric utility operations, both distribution and generation. UWUA Local 369 has been extremely active in restructuring issues – as an active participant in the legislative discussions preceding the adoption of the Restructuring Act (St. 1997, ch. 164) and as an intervenor and participant in a number of restructuring-related dockets before the Department.

UWUA Local 369 fully appreciates the importance of the Department's efforts to revisit the methods by which regulated distribution companies procure electric supply for their customers. Seven years after the passage of the Restructuring Act, the promise of that Act, at least for residential and small business customers, remains largely unfulfilled. As of November 2004, less than 3% of residential customers obtained power from a competitive supplier. The remaining 97% of residential customers rely on their traditional distribution company to obtain generation supply for them. Even among small business customers, only 7% have migrated to competitive supply.¹ There is very little ongoing activity by competitive suppliers to lure residential and small business customers to switch, and these numbers will likely remain largely static for the near and intermediate term.

Restructuring has also not brought competitively-induced price reductions, despite this being one of the premises behind its adoption. The initial legislation did mandate, as a matter of law, that prices would be reduced: first, by 10% and, subsequently, by 15% below the prices that existed as of the "retail access date" of March 1, 1998.² Between 1998 and 2000, standard offer rates increased roughly 35% to 40% for the six major distribution companies, largely in accordance with step increases included in their restructuring plans.³ From 2000 to 2001,

¹ Migration data obtained from the Division of Energy Resources, http://www.mass.gov/doer/pub_info/0411.xls

² G. L. ch. 164, § 1B(b). March 1, 1998 is the date that Massachusetts markets were officially open to competition by suppliers.

³ See DTE, "Electric Restructuring in Massachusetts - Standard Offer Service" for a chronology of standard offer prices (available at www.mass.gov/dte/restruct/competition/standardoffer.htm).

standard offer prices increased by 50% and more for the six companies.⁴ Between 2001 and 2003, prices were more variable, moving up and down for several of the companies. But 2004 standard offer prices were uniformly higher than in 2003, by 9% to 24%.⁵ Similarly, the fixed default service prices for residential customers are up significantly from one year ago, and are now at their highest levels in the past seven years (with the exception of the peak prices reached in the second half of 2001/early 2002).⁶

When the standard offer price regime expires in March 2005, all customers that are not on competitive supply will be served under default service, the only service that distribution companies will then be offering. The questions that the Department has posed about the procurement of default supply are timely and essential, given the large movement to default service that is about to occur. Distribution companies will continue to procure supply for virtually all of their residential and small business customers well after March 2005. The Department therefore should focus on developing procurement rules that will protect those customers, as much as practicable, against price increases and price volatility. It is obvious that avoiding price increases is in the interest of residential and small business consumers. But it is

⁴ *Id.* (averaging the January to June and July to December prices to derive a composite average price for 2001).

⁵ *Id.*

⁶ See DTE, “Electric Restructuring in Massachusetts - Default Service” (available at www.mass.gov/restruct/competition/defaultservice.htm). BECo’s fixed default prices for April to June 2005 are 15% higher than the April to June 2004 prices. MECo’s February to April 2005 fixed default prices are up 24% from the comparable period one year earlier.

also in the interest of residential and small business customers that the Department attempt to minimize price volatility. Many residential customers are already in arrears or struggling to keep up with their bills from month to month. Sudden changes in price make it even harder for these customers to pay their bills, as they have no financial reserves to call upon when prices increase sharply or suddenly. Customers clearly value having more-or-less level bill payments, as evidenced by the large number of customers that sign up for the levelized billing plans offered by all companies in the state, and by the increasing number of companies around the country offering “fixed bill programs.”⁷

In this context, UWUA Local 369 supports the Department allowing distribution companies to procure default service using a portfolio of more than two solicitations. (**DTE Question #1**). Including more solicitations in default service portfolios will likely reduce price volatility and would likely not lead to higher prices. Customers would derive real value from having more stable prices. In addition, distribution companies should be allowed to procure power for periods longer than twelve months (**DTE Question #2**). There is no reason to believe that utilities can minimize either price level or price volatility without the ability to include within their portfolios supply contracts of longer than twelve months’ duration. The

⁷ “Fixed bill programs” allow utility customers to pay a guaranteed, fixed amount for utility service, regardless of usage, weather, or fuel costs. The company sets the fixed price based on knowledge of the customer’s prior usage history, and includes a premium to cover unexpected increases in consumption and changes in fuel prices. Georgia Power has 250,000 (10%) of its residential customers on a fixed bill program. Duke Power, Progress Energy, Gulf Power, and Indianapolis Power and Light all operate full-scale fixed bill programs. Several other utilities are offering fixed bill programs on a pilot basis - Jacksonville Electric, Oklahoma Gas and Electric, and Alabama Power. Still others are about to roll out fixed bill pilots.

twelve month limitation derives as much from the Department's desire to open markets to competition than from any conclusion that this limitation protects consumers from high prices or volatility.⁸ Over the past few years, it has become abundantly clear that there is effectively no competition for the business of residential and small commercial and industrial customers. In light of this incontrovertible fact, the Department should begin placing greater emphasis on procurement procedures that are the most likely to lead to lower prices and greater price stability. Ultimately, the Department has both the "broad authority" and obligation to "determine ratemaking matters in the public interest."⁹ Here, the public interest requires the Department to exercise its discretion to adopt new procurement rules, in order to protect the 97% of residential customers and 93% of small business customers who will continue to rely on their distribution companies to procure supply for them. That will require allowing distribution companies to sign supply contracts for terms of greater than twelve months.¹⁰

Massachusetts is entering a period when supplies will be tightening. By 2013, ISO New England predicts that reserve margins will decline to 14%.¹¹ While distribution companies have

⁸ See, e.g., DTE 02-40-B, at 44 - 46 (discussing the balance between reflecting market prices and promoting price stability, when setting procurement terms).

⁹ *Fitchburg Gas & Electric v. DTE*, 440 Mass. 625, 637 (2004), citing *Massachusetts Inst. of Tech. v. DPU.*, 425 Mass. 856, 868 (1997).

¹⁰ The Department has already acknowledged that "the pricing and procurement strategy for smaller customers must ensure the availability of electricity at reasonable and stable prices," DTE 02-40-B, at 44, and that "default service likely will continue to play a central role in ensuring that electric service will be available at a reasonable price," *id.*, at 7.

¹¹ ISO New England, "NEPOOL 2004 - 2013 Capacity, Energy Loads & Transmission" (CELT Report), table labeled "NEPOOL & Total New England August Capabilities & Summer

divested themselves of their power plants, they are still responsible for procuring a reliable and reasonably-priced supply for the overwhelming majority of their customers. At the present time, those distribution companies are precluded from entering supply contracts for periods longer than twelve months, even if appears in the best interests of their customers that they do so. The Department should remove these hobbles. As supplies get scarcer, distribution companies may be able to lock in favorable prices for longer than twelve months. As long as the decision to purchase for a longer term appears prudent based on all of the available facts, the distribution company should be allowed to do so. The Department should acknowledge that distribution companies are the suppliers of last resort for virtually all residential and small business customers. There may be times when a distribution company could obtain an extremely favorable price from a potential supplier by agreeing to purchase the output of a plant for the truly long term, especially the output of an alternative energy facility which would have difficulty obtaining financing in the absence of the guarantee of a long-term purchase.¹² The Department must signal to distribution companies that they would be allowed in appropriate circumstances to purchase long term, if that were in the best interests of ratepayers.

UWUA Local 369 sees no legal barriers to the Department adopting these suggested changes. G. L. ch. 164, § 1B(d) does not specify the procurement terms of default service supply

Peak Load Forecast” (available at http://www.iso-ne.com/Historical_Data/CELT_Report/2004_CELT_Report)

¹² See G. L. ch. 25, § 20 for the legislature’s mandate that utilities collect a mandatory charge from electricity consumers to support the “development and promotion of renewable energy projects.” One of the greatest challenges the developers of renewable energy projects face is finding long-term purchasers for their energy output.

contracts. It requires that the “distribution company shall procure such service through competitive bidding,” but does not speak to the length of the contracts so procured. It requires that “all bids shall include payment options with rates that remain uniform for periods of up to six months,” but this requirement addresses the price options that retail customers must be offered, not the length of one or more supply contracts that a distribution company has with its wholesale suppliers. The Department already allows for a twelve month procurement period, which is longer than the six-month (or less) fixed price options that companies offer. The Department has also acknowledged that longer-term contracts, especially with renewable energy resources, are legally permissible, without requiring distribution companies to enter into those contracts.¹³

UWUA Local 369 has no firm opinion regarding the statewide purchase of default service for small customers. (**DTE Question #3**). There is too little information available regarding statewide procurement programs in New Jersey and Maine to conclude that there are clear advantages — or clear disadvantages — for Massachusetts consumers if the Department were to follow the lead of these two states. On the one hand, smaller companies such as Fitchburg (and possibly WMECo) might be able to deliver lower prices to their customers if the state were able to aggregate load statewide, through a statewide procurement process. But the Department might be able to achieve the same price reductions by adopting rules that would allow smaller companies to aggregate their loads with larger companies within the state, or with their out-of-state affiliates (e.g., WMECo with CL&P). There are obviously significant administrative

¹³ DTE 02-40-B, at 46.

hurdles to overcome before the Department could move forward with a statewide procurement program, and UWUA 369 is wary of going forward until more information could be gathered.

Finally, UWUA Local 369 agrees that the name “default” service can be confusing.

(DTE Question #5). Consumers might be less confused if it were simply called “basic” service, especially once standard offer service expires and there remains only one basic class of service, rather than the two classes of “standard” and “default.”

UWUA Local 369 thanks the Department for this opportunity to comment.

Respectfully submitted,

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